

BEFORE THE DEPARTMENT OF LIVESTOCK  
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING
ARM 32.3.220 and 32.3.401	)	ON PROPOSED AMENDMENT
pertaining to semen shipped into	)	AND ADOPTION
Montana and brucellosis definitions,	)	
and the adoption of new rules I	)	
through V pertaining to designated	)	
surveillance area and penalties	)	

1. On November 23, 2010 at 3:00 p.m. the Department of Livestock (department) will hold a public hearing at the fairgrounds in Twin Bridges, Montana, to consider the amendment and adoption of the above-stated rules.

2. The Department of Livestock will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Livestock no later than 5:00 p.m. on November 15, 2010 to advise us of the nature of the accommodation that you need. Please contact Christian Mackay, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001; telephone: (406) 444-9321; TTD number: 1 (800) 253-4091; fax: (406) 444-4316; e-mail: cmackay@mt.gov.

3. The department has amended and adopted the following rules as proposed: ARM 32.3.104, NEW RULE I (32.3.), NEW RULE III (32.3.138), NEW RULE IV (32.3.139), and NEW RULE VI (32.3.141).

4. The department has amended and adopted the following rules as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

3. The department has thoroughly considered the comments and testimony received. A summary of the comments received and the department's responses are as follows:

NEW RULE III (32.3.404 TESTING WITHIN THE DSA (1) The following official brucellosis test requirements apply to all test eligible animals that are or have been located within the DSA boundaries: ~~at any time between January 15 and June 15 of any calendar year:~~

~~(a) an annual test;~~

(b) A test within 30 days prior to movement out of the DSA or change of ownership, unless that movement is to an approved Montana livestock market or directly to a slaughter facility that will test upon arrival.

(2) A test completed July 16 or after is ~~accepted~~ acceptable for movement or change of ownership through February 15 of the following year.

(3) Other variances or exceptions to requirements will be considered on an individual basis by the administrator based on a brucellosis surveillance herd management plan.

AUTH: 81-2-102, 81-2-103, 81-2-104, MCA  
IMP: 81-2-101, 81-2-102, 81-2-103, 81-2-104, 81-2-105, 81-2-110,  
81-2-111, MCA

REASON: Testing within the DSA is intended to prevent the movement of potentially infected cattle out of an area in which diseased wildlife exist. Additionally, testing associated with this area promotes trading partner confidence in the disease-free status of exported livestock from the entire state of Montana. It is consistent with the USDA-APHIS concept paper and the new direction of the brucellosis eradication program. Animals associated with the DSA may be tested multiple times within a 30-day period due to multiple changes in ownership and/or movement, reflecting the continued risk of exposure to wildlife reservoirs.

NEW RULE IV VACCINATION WITHIN THE COUNTIES IN WHICH THE DSA IS LOCATED (1) ~~Official Calfhood Vaccination (OCV) is required~~ All sexually intact female cattle and domestic bison four (4) months of age or older as of January 1<sup>st</sup> of any year must be an Official Calfhood Vaccinate (OCV) within the entirety of counties in which the DSA is located.

(a) Female cattle or domestic bison that are not OCV eligible may become Official Adult Vaccinates (AV). ~~following a negative brucellosis test.~~

(b) Variances or exceptions to requirements will be considered on an individual basis by the administrator.

AUTH 81-2-102, 81-2-103, 81-2-104, MCA  
IMP: 81-2-101, 81-2-102, 81-2-103, 81-2-104, 81-2-105, 81-2-110,  
81-2-111, MCA

REASON: Vaccination is imperative for the protection of the breeding population in Montana. Required OCV within the counties in which the DSA is located simply makes mandatory the brucellosis program utilized by USDA-APHIS to eradicate brucellosis from livestock in the United States and improves the immunity of, and reduces the number of nonvaccinated animals within the breeding herd throughout the entire state of Montana.

NEW RULE V PENALTIES (1) Persons found to be in violation of rules or laws relating to brucellosis may be ~~are subject to:~~

(a) guilty of a misdemeanor as described in 81-2-113, MCA; and ~~or~~

(b) subject to any additional departmental expenses regarding the investigation if a violation of law has taken place, as defined in 81-2-109, MCA.

~~(a) a \$100 fee to the Department of Livestock, per animal, for failure to comply with ARM 32.3.438 (REF 81-2-102(c), MCA);~~

~~(2) Disputes will be heard by the Board of Livestock according to contested case rules of MAPA.~~

- ~~(3) In addition to the fees and expenses imposed in (1) any person, persons, firm, or corporation that fails to comply:~~  
~~(a) may be guilty of a misdemeanor as described in 81-2-113, MCA; or~~  
~~(b) may face civil liability as described in 81-2-114, MCA.~~

AUTH: 81-2-102, 81-2-103, 81-2-104, MCA  
IMP: 81-2-101, 81-2-102, 81-2-103, 81-2-104, 81-2-105, 81-2-109,  
81-2-110, 81-2-111, 81-2-113, 81-2-114, MCA

REASON: It will likely be a rare occurrence that a penalty or noncompliance fee is warranted. However, a producer who fails to comply will be required to pay a fee to the MDOL as a penalty in addition to paying for expenses such as the hourly wage of a MDOL investigator, per diem, mileage, lodging, and other miscellaneous expenses as per 81-2-102(c), 81-2-109, MCA

ECONOMIC IMPACT NEW RULE I: The boundaries themselves create no economic impact. However, a boundary may transect/divide a production unit or ranch and therefore may require a change in management due to the variation in risk (and therefore testing requirements) on each side of the boundary.

NEW RULE II: Vaccinated animals are officially individually identified as part of the required procedure at the time of OCV. Tagging cost is generally built into the cost per head of OCV. USDA silver tags are another choice, supplied to the producer for individual identification of other classes of animals at no cost. RFID tags are currently supplied to DSA producers at no charge. Additional labor may be required for retagging. However, if done at the same time as another handling event, the time required and the identification cost is negligible.

NEW RULE III: One economic concern includes the need for an additional handling event. Most producers handle their adult cattle at least once annually either for some management event (pregnancy check, etc.). To address this, the Montana Department of Livestock (MDOL) has in most cases allowed for the blood sampling to occur concurrently with routine ranch operations to minimize the number of handling events and to make efficient use of labor already available. Additionally, MDOL has frequently allowed for field personnel to be available for blood sampling or to assist the local veterinarian and producer with paperwork, sample handling, and labor. Animals originating from within the DSA moving through a Montana Livestock Auction for change of ownership do not need to be handled on the ranch; they are tested at the market or at slaughter at no additional cost to the seller.

Shrink (weight loss) is a possible concern. Anytime livestock are handled some shrink will occur. For this reason, blood sampling is typically scheduled at the same time as another routine handling event and therefore, shrink is already expected. Generally, testing is done on adult cattle not immediately going for sale or slaughter making this concern negligible.

Another concern is damage and wear to equipment and/or handling facilities. Anytime livestock are handled, some wear will occur along with the possibility of damage to equipment or facilities. For this reason, test sampling is typically scheduled at the same time as another handling event. Additionally, MDOL

maintains some cattle handling equipment for use if needed. As of July 1, 2010 two dollars (\$2) became available for reimbursement to the producer for each sample taken on the ranch to help defray equipment and labor costs.

NEW RULE IV: Approximately 70 percent of all female calves are OCV each year in Montana. Within the DSA this percentage is likely higher. Because the majority of producers in this area are currently practicing OCV, the additional impact will be minimal. OCV typically costs the producer \$2-\$5.50 per head.

NEW RULE V: Penalties do not apply to producers in compliance with requirements. A "typical" noncompliant producer will move only a couple test eligible or non-OCV animals and therefore the fee reflects an expense that reasonably reduces or altogether removes any single financial benefit of noncompliance. Some producers may refuse to comply with entire herd testing and may have fees associated that reflect herd sizes of 20 or more cattle.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Christian Mackay, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001, by faxing to (406) 444-1929, or by e-mailing to [cmackay@mt.gov](mailto:cmackay@mt.gov) to be received no later than 5:00 p.m., November 29, 2010.

6. An electronic copy of this proposal notice is available through the department's web site at [www.liv.mt.gov](http://www.liv.mt.gov).

7. The Montana Department of Livestock maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by this department. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies the area of interest that the person wishes to receive notices regarding. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to Christian Mackay, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001; faxed to (406) 444-1929 "attention Christian Mackay"; or e-mailed to [cmackay@mt.gov](mailto:cmackay@mt.gov). Request forms may also be completed at any rules hearing held by the department.

8. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

9. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

DEPARTMENT OF LIVESTOCK

BY: /s/ Christian Mackay  
Christian Mackay  
Executive Officer  
Board of Livestock  
Department of Livestock

BY: /s/ George H. Harris  
George H. Harris  
Rule Reviewer

Certified to the Secretary of State October 18, 2010.